IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.8787 of 2004

Ganpat Hariviran and ors.. petititioners
vs
The Mun Corpn of Gr Mumbai and ors.. respondents

Mr.P.M.Vyas with Mr S.R.Singh for petitioners
Mr. A.J. Bhor for Corporation

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated 23.l2.2004

P.C:

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Heard advocates.

l. By this petition, petitioners are seeking a declaration that the petitioners are entitled for alternate accommodation before demolition of their respective structures and also seeking to restrain the respondents from demolishing their huts without providing them alternative accommodation.

2. The petitioners claim that they are residing at Indira Nagar Zopadpatti, Pandurangwadi, Mulund Link Road, Goregaon (East) Mumbai and they are protected occupiers within the meaning of The Maharashtra Slum Areas (Improvement, Clearance And Redevelopment Act, l971 hereafter referred to as

the ‘Act’. The grievance of the petitioners is that out of 4l slum dwellers in the locality except petitioners all others are provided alternate accommodation in view of the policy of the State Government as reflected in the amended provisions of the Act. The petitioners complain that officers of the respondents who visited the site threatened to demolish the petitioners structures without giving any notice or opportunity of hearing to the petitioners to establish their case for alternate accommodation.

3. On behalf of the respondents the Sub-Engineer (Maintenance) P/South has filed an affidavit in reply. It is inter alia contended that the plot in question i.e. Plot No.l03/l7 admeasuring 7599 sq mts is reserved for garden in the final development plan of P/South ward and the plot is required for development in the interest of public at large and, therefore, in the month of June 2000 an inventory was carried out by the concerned staff attached to P/South ward. It was found in the inventory that there were 36 huts which were occupied by 36 different families. Thereafter fresh inventory was carried out in the month of February 2004 and at that time it was found that there are 4l huts situated on the said plot. It is therefore evident

that 5 new huts have come up after 2000. It is also contended that out of 36 huts which were found and included in the list of first inventory of 2000, 30 hutments dwellers are recommended for alternate accommodation as eligible. This recommendation was again scrutinized by the Enquiry Officer when it is observed that at some places,two huts were amalgamated into one hut and the same was being occupied by one family and thus there are only 28 eligible hutment dwellers who are actually found in occupation and eligible. It is contended that except petitioner nos. 7 and 9,other petitioners are not protected occupiers and they are not entitled for alternate accommodation.

4. We have heard the learned counsel for the parties. The learned counsel appearing for the Corporation fairly conceded that no opportunity of hearing was given to the petitioners to establish their claim of their occupation of hutments since last l5 years. We feel that the ends of justice would be served if the Corporation is directed to consider afresh the case of the petitioner nos. l to 6, 8,l0 and ll in the light of the documentary evidence produced by them in accordance with the amended provisions of the said Act. Petitioners are directed to appear before the competent

authority on l5.l.2005. Petition is accordingly disposed of.